

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

SEAN SMITH,

Plaintiff,

v.

Case No. 21-2392-HLT

NS SURGICAL CENTER, LLC,

Defendant.

**ORDER**

Defendant NS Surgical Center, LLC has filed a motion to stay pretrial proceedings (ECF No. 10) pending a ruling on its motion for summary judgment (ECF No. 8). Plaintiff does not oppose the request, and the motion to stay is granted.

It has long been the general policy in the District of Kansas not to stay discovery even if a dispositive motion is pending,<sup>1</sup> but exceptions to this policy are recognized. A discovery stay may be appropriate if: (1) the case is likely to be finally concluded via a dispositive motion; (2) the facts sought through discovery would not affect the resolution of the dispositive motion; or (3) discovery on all issues posed by the complaint would be wasteful and burdensome.<sup>2</sup> Moreover, “it is well settled that the district court has the power to stay proceedings pending before it and to control its docket for the purpose of economy

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<sup>1</sup> See *Wolf v. United States*, 157 F.R.D. 494, 495 (D. Kan. 1994).

<sup>2</sup> See *id.* (citing *Kutilek v. Gannon*, 132 F.R.D. 296, 297-98 (D. Kan. 1990)); *Lofland v. City of Shawnee*, No. 16-2183, 2016 WL 5109941, at \*1 (D. Kan. Sept. 20, 2016).

of time and effort for itself, for counsel, and for litigants.”<sup>3</sup> The decision whether to stay proceedings rests in the sound discretion of the court.<sup>4</sup> As a practical matter, this calls for a case-by-case determination.<sup>5</sup>

Defendant filed an early motion for summary judgment on November 3, 2021, asserting it’s entitled to judgment as a matter of law on plaintiff’s Title VII claims against it because it is not an “employer” as that term is defined within Title VII. Plaintiff’s response is currently due November 24, 2021. It’s not yet clear whether plaintiff will seek discovery in responding to the summary judgment motion, but defendant’s proposed stay of proceedings carves out “a limited exception for any reasonable discovery necessary for plaintiff to conduct, if any, in order to respond to Defendant’s Motion for Summary Judgment.”<sup>6</sup>

The undersigned does not presume to know how the presiding U.S. District Judge, Holly L. Teeter, will decide the motion for summary judgment, especially at this stage of briefing. But it’s very possible her decision could result in judgment being entered in defendant’s favor. The court believes the most efficient approach—for both the parties and the court—is for discovery to be stayed until Judge Teeter enters an order. Should

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<sup>3</sup> *Baca v. Berry*, 806 F.3d 1262, 1269-70 (10th Cir. 2015) (internal quotation marks, modifications, and citation omitted).

<sup>4</sup> *Id.* at 1270; *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.”).

<sup>5</sup> *Citizens for Objective Public Educ., Inc. v. Kan. State. Bd. of Educ.*, No. 13-4119, 2013 WL 672823, at \*1 (D. Kan. Dec. 19, 2013).

<sup>6</sup> ECF No. 10 at 4.

plaintiff seek discovery to respond to defendant's motion for summary judgment, presumably via a Rule 56(d) affidavit or declaration, the nature, extent, and timetable for any discovery plaintiff seeks, as well as modifications to the existing dispositive-motion briefing deadlines, are for Judge Teeter to decide.

All pretrial proceedings in this case, including discovery and initial disclosures, are stayed until further order of the court. The telephone scheduling conference set for November 22, 2021, is cancelled. The November 10, 2021 deadline for the parties to submit a report of planning conference pursuant to Fed. R. Civ. P. 26(f) is vacated. Should the case survive the pending motion for summary judgment, the parties shall confer and submit a Rule 26(f) planning meeting report to the undersigned chambers within 14 days of the ruling of the motion. The court will then set a scheduling conference.

IT IS SO ORDERED.

Dated November 4, 2021, at Kansas City, Kansas.

s/ James P. O'Hara  
James P. O'Hara  
U.S. Magistrate Judge